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EXAMINER

MARMOR II, CHARLES ALAN

ART UNIT

PAPER NUMBER

3736

DATE MAILED: 01/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/977,019

Applicant(s)

EDWARDS ET AL.

Examiner

Charles A. Marmor, II

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-57 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "60-64" as mentioned in paragraph [0059] of the specification and "70-75" as mentioned in paragraph [0066] of the specification. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:
- a. In paragraph [0001], line 4, the appropriate application serial number should be inserted in place of "_____".
 - b. In paragraph [0006], line 6, the appropriate application serial number should be inserted in place of "xxxx".
 - c. In paragraph [0006], line 8, the appropriate filing date should be inserted in place of "xxxx".
 - d. In paragraph [0010], line 2, "hear" apparently should read --hearing--.
 - e. In paragraph [0066], line 3, "Fig. 10" apparently should read --Fig. 9--.
 - f. In paragraph [0092], line 10, "said" apparently should read --the--.
- Appropriate correction is required.

3. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code at least in paragraph [0009]. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Objections

5. Claim 1 is objected to because of the following informalities: in line 6, “that” apparently should read --to--. Appropriate correction is required.

6. Claim 22 is objected to because of the following informalities:

- a. In line 3, --data-- apparently should be inserted before “processor”.
- b. In line 9, “selects” apparently should read --select--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 11, 12, 15-20, 32, 33, 36-41 and 44-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitations "the subject" in line 5 and "the user's" in line 6. There is insufficient antecedent basis for these limitations in the claim. There is no subject or user recited in the claims prior to these recitations. Furthermore, it is unclear whether or not the user is the same individual the subject.

Claim 12 recites the limitations "the subject" in line 4 and "the user's" in line 5. There is insufficient antecedent basis for these limitations in the claim. There is no subject or user recited in the claims prior to these recitations. Furthermore, it is unclear whether or not the user is the same individual the subject.

Claim 15 recites the limitation "said base line threshold" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no base line threshold recited in the claims prior to this recitation.

Further regarding claim 15, it is unclear whether "the response" recited in lines 3 and 5 is intended to refer to the "response to said base line threshold" recited in line 2 of claim 15 or the "choice" made by the subject in lines 4-5 of claim 12.

Claim 20 recites the limitation "said base line threshold" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no base line threshold recited in the claims prior to this recitation.

Further regarding claim 20, it is unclear whether “the response” recited in lines 3, 5, 8 and 10 is intended to refer to the “response to said base line threshold” recited in line 2 of claim 20 or the “choice” made by the subject in lines 4-5 of claim 12.

Claim 32 recites the limitation "the user's" in line 7. There is insufficient antecedent basis for this limitation in the claim. There is no user recited in the claims prior to this recitation. Furthermore, it is unclear whether or not the user is the same individual the subject.

Claim 33 recites the limitation "the user's" in lines 5-6. There is insufficient antecedent basis for this limitation in the claim. There is no user recited in the claims prior to this recitation. Furthermore, it is unclear whether or not the user is the same individual the subject.

Claim 36 recites the limitation "said base line threshold" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no base line threshold recited in the claims prior to this recitation.

Further regarding claim 36, it is unclear whether “the response” recited in lines 3 and 5 is intended to refer to the “response to said base line threshold” recited in line 2 of claim 36 or the “choice” made by the subject in lines 5-6 of claim 33.

Claim 38 recites the limitation "the test" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim. There is no test recited in the claims prior to these recitations.

Claim 41 recites the limitation "said base line threshold" in line 2. There is insufficient antecedent basis for this limitation in the claim. There is no base line threshold recited in the claims prior to this recitation.

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Further regarding claim 41, it is unclear whether “the response” recited in lines 3, 5, 8 and 10 is intended to refer to the “response to said base line threshold” recited in line 2 of claim 41 or the “choice” made by the subject in lines 5-6 of claim 33.

Claim 44 recites the limitation "the subject" in line 6. There is insufficient antecedent basis for this limitation in the claim. There is no subject recited in the claims prior to this recitation.

Further regarding claim 44, it is unclear whether “the device” recited in lines 4 and 7 is intended to refer to the “consumer electronics device” recited in line 1 or the “input device” recited in line 2.

Regarding claim 45, it is unclear whether “the device” recited in line 2 is intended to refer to the “consumer electronics device” recited in line 1 of claim 44 or the “input device” recited in line 2 of claim 44.

Claim 45 recites the limitation "the user's" in line 6. There is insufficient antecedent basis for this limitation in the claim. There is no user recited in the claims prior to this recitation. Furthermore, it is unclear whether or not the user is the same individual the subject.

Regarding claim 46, it is unclear whether “the device” recited in line 2 is intended to refer to the “consumer electronics device” recited in line 1 of claim 44 or the “input device” recited in line 2 of claim 44.

Claim 46 recites the limitation "the user's" in lines 4-5. There is insufficient antecedent basis for this limitation in the claim. There is no user recited in the claims prior to this recitation. Furthermore, it is unclear whether or not the user is the same individual the subject.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

10. Claims 1, 3-10, 22 and 24-31 are rejected under 35 U.S.C. 102(e) as being anticipated by Menzel et al. ('272). Menzel et al. teach a method and apparatus for conducting a hearing test using a computer program by establishing a communication channel between a remote device and a server in a communication network; executing a first component of the computer program at the server and executing a second component of the computer program at the remote device. The computer program may be a routine that manages an interaction via an interface on the remote device. The apparatus may include a data processor, a communication interface coupled to the data processor, and a memory coupled to the data processor. The communication network may comprise a packet-switched network or a network executing according to a standard internet protocol. The channel may be a connection according to (TCP/IP), a link through a cellular telephone network or a pager network. The remote device may be a mobile phone, a home computer, or a hand-held computing platform.

The applied reference has a common inventor with the instant application. Based upon the earlier effective filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR

1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

11. Claims 1, 2, 4-10, 12-15, 17, 19, 21-31, 33-36, 38, 40, 42-44, 46-49, 51, 53 and 55-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Naidoo ('207). Naidoo teaches an internet platform with a hearing screening test. The internet platform allows a hearing test to be conducted using a computer program by establishing a communication channel between a remote device and a server in a communication network; executing a first component of the computer program at the server and executing a second component of the computer program at the remote device. The computer program is a routine that manages interaction via an interface on the remote device and adaptively selects stimuli based on the interaction to be produced at the remote device for the interaction according to a convergent process to determine a hearing characteristic. The apparatus may include a data processor, a communication interface coupled to the data processor, and a memory coupled to the data processor. The communication network may comprise a network executing according to a standard internet protocol. The channel may be a connection according to (TCP/IP), a link through a cellular telephone network or a pager network. The remote device may be a mobile phone, a home computer, or a hand-held computing platform. The interaction includes a three-alternative forced choice interaction and the convergent process includes a staircase function or a maximum likelihood procedure. A visual effect is provided at the device corresponding to each of the stimulus intervals and the subject is prompted to make a choice by selecting a visual effect indicating the user's perception

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of the stimulus during the 3 stimulus intervals. A first stimulus is selected in response to a baseline threshold. Subsequent stimuli are reduced or increased in magnitude by a step amount if the interaction identifies a correct interval 1 time or an incorrect interval 1 time, respectively.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 11, 32 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naidoo ('207). Naidoo teaches all of the limitations of the claims except that the graphic constructs for display at the device corresponding to each of the 3 stimulus intervals are aligned in an up and down relationship. Naidoo does teach that the screen may be modified to make the screen information more appealing or readable, for example by making the areas where mouse-clicking is required larger for older subjects (col. 4, lines 50-61). It would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made in view of the teachings of Naidoo to arrange the mouse-clicking areas on the screen in an up and down relationship in order to allow said areas to be enlarged to the width of the screen such that said areas are more readable and accessible to older subjects.

14. Claims 16, 18, 20, 37, 39, 41, 50, 52 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naidoo ('207) in view of Hou ('521). Naidoo teaches all of the limitations of

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the claims except that after a number of reversals of step direction in the staircase function a subsequent stimulus is reduced or increased by a second downward or upward amount if the subject identifies a correct interval a number X times or identifies an incorrect interval a number Y times. Hou teaches a method and system for on-line hearing examination and that it is known to use a staircase function during a hearing test where, after a number of reversals of step direction in the staircase function, a subsequent stimulus is reduced or increased by a second downward or upward amount, different from a first amount, if the subject identifies a correct interval a number X times or identifies an incorrect interval a number Y times. It would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made to use a staircase function similar to that of Hou as the staircase function in a method and apparatus similar to that taught by Naidoo as a design choice, merely substituting one known type of hearing test employing a staircase function for another.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Horn teaches a method of allowing a community of users to administer a hearing test via a computer system accessed over the internet. Pavlakos teaches an internet-based audiometric testing system. Rho teaches a method for testing hearing ability by using the internet.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Marmor, II whose telephone number is (703) 305-3521. The examiner can normally be reached on M-TH (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



Charles A. Marmor, II
Examiner
Art Unit 3736

CAM
January 20, 2003